UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

ROGELIA DE LEON LOPEZ and JUANA CASTILLO AVELAR,

Petitioners

v.

SCOTT LADWIG, in his official capacity as Acting Field Office Director of the New Orleans Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations;

Warden, South Louisiana ICE Processing Center, in their official capacity;

TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and

PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

Case No. _____

PETITIONERS' MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to Fed. R. Civ. P. 65(b), Petitioners Rogelia De Leon Lopez and Juana Castillo Avelar ("Petitioners"), hereby request a temporary restraining order ("TRO") pending adjudication of their Petition for a Writ of Habeas Corpus and an order to show cause why a preliminary injunction should not issue pending the final disposition of their habeas petition. As set in the memorandum of law, Petitioners are likely to succeed on the merits of their claim.

Relief is necessary and appropriate to stop grave continuing injury and further irreparable harm to Petitioners.

Date: 11/25/25

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PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF A MOTION FOR TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

Since early September 2025, Respondents have detained Petitioners Rogelia De Leon Lopez and Juana Castillo Avelar ("Petitioners"), in the South Louisiana ICE Processing Center ("SLIPC"), a facility over 1,000 miles away from their families, their medical care, community, and counsel. Petitioner De Leon Lopez is a pregnant woman nearing her sixth month of pregnancy. She has lost about 10 pounds to date, and the unlawful detention continues to subject her and her baby to irreparable harm. Petitioner Juana Castillo Avelar suffers from health conditions such as acute anemia, which has caused her to faint in detention, requiring hospitalization. Respondents' unlawful detention has interrupted Petitioner Castillo Avelar's ongoing medical treatments, such as prescribed IV vitamin infusions, and has prevented Petitioner De Leon Lopez from obtaining routine check-ups from her original doctor.

Petitioners are both being detained under DHS's recent re-interpretation of their statutory authority, which has been rejected by the overwhelming majority of courts to have considered the issue. Petitioners demonstrate that they are likely to succeed on the merits of their claims and that their detention violates their statutory and due process rights, that they will suffer irreparable harm absent action by this court, and that the balance of equities weighs in their favor.

Pursuant to Fed. R. Civ. P. 65(b) and Local Rule of Civil Procedure 65.1, Petitioners respectfully move this Court for a temporary restraining order pending the Court's adjudication of their Petition for Writ of Habeas Corpus. Specifically, Petitioners request the Court orders Respondents to immediately release Petitioners pending the adjudication of their habeas petition, so they can receive the urgent medical care their medical conditions require. In the alternative, we request that this Court order a bond hearing by an immigration judge on the merits with procedural safeguards within 5 days of an order.

II. STATEMENT OF FACTS AND PROCEDURE

Petitioner Rogelia de Leon Lopez is a 32-year-old, pregnant woman currently detained by ICE at SLIPC in Basile, Louisiana. Petitioner Juana Castillo Avelar is a 44-year-old woman with chronic and acute medical conditions, currently detained by ICE at SLIPC. They have both been in immigration detention since September 4, 2025. Ms. De Leon Lopez has an asylum application pending with the Executive Office for Immigration Review ("EOIR"), and Ms. Castillo Avelar has a pending application for cancellation of removal.

At the time of her arrest by immigration officials, Ms. De Leon Lopez was approximately three months pregnant and notified agents about her pregnancy. Despite this, she was handcuffed and chained across her belly for the several hours of transit between New York and Louisiana. As of early November, Ms. De Leon Lopez had lost approximately 10 pounds during her detention. Petitioners have not been provided with pillows at SLIPC, which has contributed to De Leon Lopez experiencing discomfort and pain when trying to sleep, and worsened the quantity and quality of sleep. She is unable to tolerate or digest the canned meals served in detention. She fears for her health, her life, and that of her unborn baby.

Ms. Castillo Avelar, who suffers from anemia, has felt ill since arriving in the detention center and has received inadequate medical care. At the time of the raid, she had begun seeing benefits from a course of IV vitamin infusion treatments that she was in the middle of but was discontinued after her detention. She also suffered from an untreated urinary tract infection for two weeks. She did not receive iron supplements or any other medical treatment for her anemia from Respondents until she fainted. Ms. Castillo Avelar continues to experience muscle pain, nausea, and exhaustion, as she cannot sleep due to the pain. Respondents informed her that she

could only get another medical appointment if she took the iron supplement for a month and remained in pain.

Respondents are engaged in a practice of arbitrary civil detention without due process for Petitioners. On September 5, 2025, Respondent Bondi, through the Board of Immigration Appeals ("BIA"), issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025), which purports to subject any noncitizen who has not been formally admitted to the United States to mandatory detention. 29 I&N Dec. at 228. Since then, the Department of Justice (DOJ) has refused to provide bond hearings to these detained noncitizens despite a century of settled law and practice. As of present, Petitioners have not received an opportunity to receive release on bail.

III. ARGUMENT

This Court should issue a TRO ordering Petitioners' release pending adjudication of their habeas petition. The standards for granting a TRO and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure are identical. To obtain temporary and preliminary injunctive relief, each Petitioner must demonstrate (1) substantial likelihood of success on the merits of her habeas petition, (2) that she will suffer significant risk of harm unremedied by monetary damages or other legal remedies absent the granting of injunctive relief, (3) that the threatened injury outweighs any harm the injunction may cause Respondents, and (4) finally, that an injunction is in the public interest. *City of El Cenizo v. Texas*, 890 F.3d 164, 176 (5th Cir. 2018) (citing *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012)); *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000) (reaffirming the standard to obtain temporary injunctive relief set out in *Sugar Busters L.L.C. v. Brennan,* 177 F.3d 258, 265 (5th Cir.1999)); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555

U.S. 7, 20 (2008). When the government is a party, the balance of equities and public interest merge, and the Fifth Circuit considers the last two factors together. *United States v. Abbott*, 110 F.4th 700, 719 (5th Cir. 2024); *Nken v. Holder*, 556 U.S. 418, 435 (2009). The decision of whether to grant or deny a TRO or preliminary injunction lies in the district court's discretion. *Moore v. Brown,* 868 F.3d 398, 402 (5th Cir. 2017); *see also Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985). Under the circumstances presented herein, no security bond is required under Federal Rule of Civil Procedure 65(c).

1. Petitioners are Likely to Succeed on the Merits of Their Petition for Writ of Habeas Corpus.

a. Petitioners are Likely to Prevail On their Claims That Their Detention Is Unlawful and Unauthorized by Statute.

Nationwide, courts have overwhelmingly held that detained immigrants, such as the Petitioners, fall subject to 8 U.S.C. § 1226(a) and have granted TROs that argue that the underlying habeas will succeed on such a claim. They have based their reasoning on the Supreme Court's holding in *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018), which distinguished between a noncitizen "already present in the United States," who shall be subject to Section § 1226, not Section 1225, and is thus not subject to mandatory detention, and those who are otherwise arriving. *See Kostak v. Trump*, 2025 WL 2472136, at *2-3 (W.D. La. Aug. 27, 2025) (holding that mandatory detention of aliens like Petitioner "under Section 1225 was erroneous..." and that they are instead subject to Section 1226); *see also Lopez Santos v. Noem*, 2025 WL 2642278, at *3-5 (W.D. La. Sept. 11, 2025) (Doughty, C.J.) (holding same); *see also Carlos Ventura Martinez v. Donald J. Trump*, No. CV 25-1445 SEC P, 2025 WL 3124847, at *1 (W.D. La. Oct. 22, 2025) (finding that *Matter of Yajure Hurtado* "is incorrect" and that the "[federal

district] Court is empowered to ignore it" in the case of already present in the noncitizens who are likely subject to 1226). As such, the overwhelming majority of federal courts have disagreed with how the BIA reads §§ 1226(a) and 1225(b)(2)(A) in conjunction with one another. *See Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 n.3 (S.D. Tex. Oct. 7, 2025) (collecting cases granting habeas or injunctive relief for wrongly detained individuals under the faulty statutory interpretation in *Matter of Yajure Hurtado*).[1]

Here, the circumstances of Petitioners squarely fall in the pattern of wrongly detained individuals under 1225(b)(2) by Respondents. As women who have lived in the U.S. for years, have built community and ties, and have medical conditions for which they were seeking treatment and care in New York, they are likely to succeed in the merits of their claim that they are subject to 1226(a), making this factor rule in favor of granting the TRO.

b. Petitioner De Leon Lopez is Likely to Prevail on their Claim that her Arrest and Continued Detention Violates the APA and *Accardi* Doctrine

The APA provides that a court "shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). When the government has promulgated "[r]egulations with the force

[1] To date, over 45 district courts have granted habeas petitions under similar grounds. *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025); *Alvarez Puga v. Assistant Field Off. Dir., Krome North Serv. Processing* Ctr., No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Ventura Martinez v. Trump* (W.D. La. Oct. 22, 2025); *Padron Covarrubias v. Vergara*, 5:25-CV-112 (S.D. Tex. Oct. 8, 2025); *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2782499, at *1 n.3 (W.D. Wash. Sept. 30, 2025) (citing over 20 district court decisions rejecting the government's position); *Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025) (collecting 20 cases in note 8 and accompanying discussion); *Alvarez Puga v. Assistant Field Off. Dir., Krome North Serv. Processing* Ctr., No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025) (collecting cases); *see also Hyppolite v. Noem et al.*, 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) (noting that the government conceded at oral argument that they were not "aware of *any* Article III court that had adopted their interpretation" of the statute).

and effect of law," those regulations "supplement the bare bones" of federal statutes, such that the agencies are bound to follow their own "existing valid regulations." *United States ex rel. Accardi Shaugnessy*, 347 U.S. 260, 266, 268 (1954). The *Accardi* doctrine also obligates agencies to comply with procedures it outlines in its internal manuals. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (finding that an agency is obligated to comply with procedural rules outlined in its internal manual). ICE has promulgated guidance that, upon information and belief, has not been rescinded, instructing that pregnant individuals should not be detained absent extraordinary circumstances. ICE Directive 11032.4, *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals*.[2] It additionally prohibits the use of restraints absent "extraordinary circumstances." In our case, Petitioner De Leon Lopez's arrest and continued detention despite immigration agents' and detention center staff's knowledge that she is pregnant facially violates federal regulations and ICE guidance. Petitioner De Leon Lopez's habeas petition is likely to prevail under this claim.

c. Petitioners are Likely to Prevail on Their Fifth Amendment Due Process Claim.

The Fifth Amendment of the Constitution guarantees that noncitizens receive adequate procedural protections during any executions of the government's detention and removal authorities. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Such protections are flexible and courts adjudicating a due process claim for a civil detainee have been guided by considerations for the "private interest that will be affected[,]" "the risk of an erroneous deprivation of such interest through the procedures used[,]" and "the Government's interest,

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2 https://www.ice.gov/directive-identification-and-monitoring-pregnant-postpartum-or-nursing-individuals (last accessed Nov. 24, 2025).

including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Courts in this circuit have overwhelmingly granted habeas corpus petitions for detained immigrants without access to a bond hearing or determination on Fifth Amendment Procedural grounds.

Under the *Mathews v. Eldridge* factor of private interests, courts have established that "the most elemental of liberty interests [is] the interest in being free from physical detention…" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). They have weighed the private interest factor in favor of similarly detained immigrants in civil proceedings. *See Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521, at *7 (S.D. Tex. Nov. 14, 2025) (finding that petitioner's detention weighed in favor of a due process claim violation under a *Mathews* test as he had children living in the United States, had substantial ties to the community, and had previous employment).

Under the second factor, courts have found a significant risk of erroneous deprivation under the current procedures of holding detained people in detention without an individualized determination. *See Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025) (granting the habeas corpus for a Mexican petitioner who was detained without an individualized bond hearing under the *Mathews* test). Lastly, courts have weighed the existing alternative procedures in favor of granting habeas for detained petitioners and determined that alternatives are viable. *See e.g.*, *id.*; *Arcos v. Noem*, No. 4:25-CV-04599, 2025 WL 2856558, at *3 (S.D. Tex. Oct. 8, 2025).

In this case, Respondents have deprived Petitioners of their liberty—an important factor weighing in Petitioners' favor. Courts nationwide have also recognized the significant risk of

erroneous deprivation that individuals in Petitioners' position face under current practices. Yet Respondents deny Petitioners any bond-determination hearing to assess flight risk or danger to the community, in clear violation of due process, thereby compounding the risk of erroneous deprivation. More gravely, Respondents' actions subject Petitioners to serious medical danger, including risks to Petitioner De Leon Lopez's unborn baby, despite the availability of less restrictive alternatives. These factors all weigh heavily in the Petitioners' favor under the *Matthews* test, as release or a bond hearing would protect both their liberty interests and their medical security without harm to Respondents.

d. Petitioners De Leon Lopez and Castillo Avelar are Likely to Prevail on their Claim that Their Detention Violates Their Fifth Amendment Substantive Due Process Claim to Medical Safety.

Furthermore, the Fifth Amendment of the Constitution guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The federal government violates a detained individual's substantive due process rights if it "takes [that] person into custody, severely limiting his ability to care for himself, and then is deliberately indifferent to his medical needs [.]" *Charles v. Orange Cnty.,* 925 F.3d 73, 85 (2d Cir. 2019); *see also Helling v. McKinney*, 509 U.S. 25, 32 (1993) ("[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., . . . medical care and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment.").

In fact, courts take medically threatening conditions seriously, with courts in this circuit holding that detainees who face medically threatening conditions are subject to due process violations and have rendered their detention unconstitutional even in mandatory detention cases.

Vazquez Barrera v. Wolf, 455 F. Supp. 3d 330, 340 (S.D. Tex. 2020) (granting injunctive relief for detainees in mandatory detention who posed little adverse risk to the public under 1226(c)). *See also Peregrino Guevara v. Witte*, No. 6:20-CV-01200, 2020 WL 6940814, at *9 (W.D. La. Nov. 17, 2020), *report and recommendation adopted*, No. 6:20-CV-01200, 2020 WL 6929700 (W.D. La. Nov. 24, 2020) (agreeing that petitioner's due process claim was likely to succeed as petitioner "faced a heightened threat of serious illness, long-term injury, and possible death" due to his medical condition and detention conditions.)

Here, Respondents are being deliberately indifferent to Petitioners' medical conditions as a pregnant woman and a detained individual with a worsening physical state. Respondents have limited Petitioners' ability to receive prescribed treatment or prenatal care with their primary physician, which our Highest Court has denounced in *Bell v. Wolfish* and *Helling*. Petitioners are not only at risk of "serious illness" like in *Vasquez Barrera*, but are also already beginning to experience symptoms of physical injury and unlawful retribution by being denied the proper necessary care needed for their current states. *See Vasquez Barrera v. Wolf*, 455 F. Supp. 3d 330 (S.D. Tex. 2020). As such, Respondents are subjecting Petitioners to conditions that deny medical care, confinement akin to punishment, and state action prohibited under the Eighth Amendment; thus, they are likely to prevail on this claim as well.

2. Petitioners Have Suffered and Will Continue to Suffer Irreparable Harm Absent Injunctive Relief.

Parties seeking preliminary injunctive relief must also show they are "*likely* to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis.,*

L.L.C. v. Vascular Health Scis., L.L.C., 710 F.3d 579, 585 (5th Cir. 2013).

a. Absent a TRO, Petitioners with Chronic Conditions Will Continue to Suffer Irreparable Harm.

The Fifth Amendment of the Constitution guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The federal government violates a detained individual's substantive due process rights if it "takes [that] person into custody, severely limiting his ability to care for himself, and then is deliberately indifferent to his medical needs[.]" *Charles v. Orange Cnty.*, 925 F.3d 73, 85 (2d Cir. 2019). *See Vasquez Barrera*, 455 F. 3d at 340 (ordering release for detained for detained petitioners with vulnerable chronic conditions in the midst of the COVID-19 outbreak facing imminent irreparable harm); *Peregrino Guevara v. Witte*, 2020 WL 6940814, at *9 (granting a TRO where the court determined "there [was] a significant and heightened risk that [the petitioner] experiences severe illness").

Similarly, in the present matter, the detriment and risk to Petitioner's health and worsening conditions warrant the court's immediate intervention. Each passing day that Petitioners remain in detention, they are facing dire threats and enduring physical suffering and injury. Petitioners' injuries are not speculative or imminent; rather, they have commenced and are ongoing. Petitioners have already begun showing symptoms of physical decline – weight loss, exhaustion, and fainting—akin to the situations in *Basank* and *Vasquez Barrera*. *See Basank v. Decker*, 449 F. Supp. 3d 205 (S.D.N.Y. 2020). By unlawfully confining Petitioner De Leon Lopez, Respondents expose her to a grave and entirely preventable risk of miscarriage, stillbirth, or maternal death—harms that other pregnant women have tragically endured while in detention. *See* Lora Strum, *Pregnant and Postpartum Women Face Neglect and Abuse in ICE Detention*, ACLU (Oct. 27, 2025),

https://www.aclu.org/news/immigrants-rights/pregnant-and-postpartum-women-face-neglect-and-abuse-in-ice-detention. Respondents' unlawful detention of Petitioners not only deprives them of physical liberty but also deprives them of necessary care, more than meeting the irreparable harm standard.

b. Respondents' Deprivation of Petitioners' Constitutional Right to Liberty Constitutes an Ongoing Irreparable Harm.

Constitutional violations have also permitted a *per se* finding of irreparable harm. *See e.g., Conn. Dep't of Envtl. Prot. V. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) ("[W]e have held that the alleged violation of a constitutional right triggers a finding of irreparable injury.") (internal citations and quotation marks omitted); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) ("[An] alleged violation of a constitutional right . . . triggers a finding of irreparable harm.") (emphasis in original). Additionally, the unconstitutional deprivation of liberty, even temporarily, constitutes irreparable harm. *See Book People, Inc. v. Wong*, 91 F.4th 318, 340-41 (5th Cir. 2024).

Here, Respondents are violating Petitioners' procedural and substantive due-process rights under the Fifth Amendment by subjecting them to punitive confinement without access to necessary medical care or the bond-hearing procedures required under § 1226(a). As wrongfully detained women with serious medical conditions, Petitioners are suffering an ongoing deprivation of their constitutional rights—and that violation alone constitutes irreparable harm.

3. Balance of Hardship and Public Interest Weighs Heavily in Petitioners' Favor.

Finally, there is a public interest in ensuring people's constitutional rights are upheld. As noted in other cases in this court, the continued detention without a bond hearing in violation of their Fifth Amendment rights far outweighs the burden of Respondents in conducting an

individualized bond hearing before an immigration judge pursuant to §1226(a). *See Pineda Parada v. Rice*, 2025 WL 3146250, at *3 (W.D. La. Nov. 4, 2025). Furthermore, it is in the public interest that the Government follow its own statutes and regulation. *Kostak v. Trump*, 2025 WL 2472136, at *4 ("The Court also finds that granting Petitioner injunctive relief serves the public interest, as it will require the Government to ensure compliance with its own laws.") For pregnant women, additionally, there is a public interest in ICE following its own guidance. ICE Directive 11032.4, *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals*.

So too in the instant case. The Court must weigh the unconstitutional detention of Petitioners and the risk to their immediate medical safety and that of an unborn child against the minimal governmental burden of providing release while the habeas petition is pending. Furthermore, neither Petitioner is dangerous or presents a flight risk. Given the lack of risk posed by Petitioners and the strong public interest in assuring that the government follows the law and does not detain people illegally, the public interest lies in releasing them immediately so they can receive adequate care.

IV. CONCLUSION

For the foregoing reasons, Petitioners request that the Court grant temporary injunctive relief, ordering Respondents to immediately release Petitioners. In the alternative, we request that Respondents be ordered to conduct a bond hearing at which the government must bear the burden of justifying Petitioner's continued detention by clear and convincing evidence. Absent this Court's intervention, Petitioners will remain unlawfully detained, separated from their families, and forced to endure preventable and high-risk physical suffering.

Respectfully submitted,

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